

**ORIGINAL
FILE**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Billed Party Preference
for 0+ InterLATA Calls

CC Docket No. 92-77

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JUN 17 1992

Federal Communications Commission
Office of the Secretary

**JOINT REPLY COMMENTS OF
CLEARTEL COMMUNICATIONS, INC. AND COM SYSTEMS, INC.**

Cleartel Communications, Inc. and Com Systems, Inc. ("Joint Commenters"), by their undersigned counsel, hereby submit their reply to the initial comments filed in response to the Commission's proposal regarding proprietary calling cards and 0+ access.^{1/}

The initial comments of numerous parties strongly support the Commission's proposal to preclude the use of proprietary interexchange carrier ("IXC") calling cards on a 0+ basis. The rule would give AT&T (and all other IXCs which may in the future choose to issue calling cards usable with 0+ access) a choice: either restrict such "proprietary" cards to "proprietary" access code dialing, or share validation and billing information for the cards with other IXCs when the cards are used on a 0+ basis at locations not presubscribed to the issuing carrier.

These parties all agree that AT&T's anti-competitive and misleading CIID card program has created an urgent need for the Commission to establish a regulatory framework for

^{1/} See Notice of Proposed Rulemaking, FCC 92-169 (released May 8, 1992) ("Notice") at paras. 36-43. The Commission established an expedited pleading cycle addressing the proprietary calling cards and 0+ access proposals. Initial comments on these issues were filed on June 2, 1992.

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IXC cards used with 0+ access.^{2/} It is critical that the Commission adopt the proposed rule immediately to halt AT&T's attempt to re-monopolize the operator services market through its CIID card program and to ensure continued competition by returning the use of 0+ dialing to the public domain.

I. VALIDATION AND BILLING INFORMATION CAN AND SHOULD BE MADE AVAILABLE TO IXCS COMPLETING 0+ DIALED CALLS BILLED TO AT&T'S CIID CARDS

AT&T has offered no compelling reason why it should not provide validation and billing information for the calling cards it issues with instructions that subscribers dial 0+ to use the card. AT&T has claimed that sharing of billing and validation information for its CIID cards would be contrary to the rate expectations of its cardholders, and that it would be "anti-competitive" to require AT&T to make its proprietary technology and customer data available to its competitors.^{3/} As detailed below, AT&T's concerns have been fully addressed in the initial comments supporting the Commission's proposal and pose no barrier to the adoption of the proposed rule. To the contrary, the comments demonstrate that the provision of such data would be the most effective and least disruptive to cardholders of the two options posed by the Commission.

^{2/} See generally e.g., Comments of MCI Telecommunications Corporation; Comments of LDDS Communications, Inc.; Comments of BellSouth Telecommunications, Inc. ("BellSouth"); Comments of the Pacific Companies; Comments of Advanced Telecommunications Corporation ("ATC"), AmeriCall Systems, Inc. ("AmeriCall") and First Phone of New England, Inc. ("First Phone"); Comments of International Telecharge, Inc. ("ITI"); Comments of Capital Network System, Inc. ("CNS"); Comments of the Competitive Telecommunications Association ("CompTel"); Comments of Value-Added Communications, Inc. ("Value-Added").

^{3/} AT&T Comments at 3-5.

AT&T argues that it must not permit other IXC's to accept its CIID cards in order to protect cardholder expectations that using the card will guarantee AT&T service and rates. Joint Commenters' initial comments anticipated this argument. To the extent that the Commission may find that AT&T has indeed created such an expectation through its marketing of the cards, and that the Commission believes that such expectations cannot be cured by corrective calling card information and the written notice regarding carrier choice and rates it has mandated, Joint Commenters proposed a way for the Commission to address and eliminate this concern.^{4/}

Specifically, as a condition of receiving billing and validation information for an IXC card used with 0+ access, the Commission could require IXC's to bill calls charged to the card at a rate consistent with the cardholder's expectations.^{5/} This proposal would resolve AT&T's purported concern regarding the expectations of its subscribers. While adoption of the proposed rate limitation would put AT&T's competitors in the position of accommodating (and possibly subsidizing) AT&T's customers in order to solve a problem AT&T created, it would at least help to lessen the damage caused by 0+ dialing of unbillable calls into other IXC's networks by AT&T's cardholders, and promote continued competition in the aggregator presubscription market.^{6/}

^{4/} See Cleartel and Com Systems Comments at 10-13.

^{5/} See id.

^{6/} See id. at 12-13. CNS has raised a number of significant concerns about obstacles to fair competition which currently exist in the operator services market, including a number of cost advantages enjoyed by AT&T. See CNS Comments at 15-16. To avoid any losses from a rate cap based on AT&T's rate, which is founded on AT&T's lower costs, it may be appropriate for the Commission to adopt an option for IXC's to make an explicit rate announcement when they accept another IXC's calling card dialed on a 0+ basis. Specifically, the Commission could give IXC's an option of either (1) adhering to a rate cap when accepting another carrier's proprietary
(continued...)

The record also shows that AT&T's concern that the option of sharing proprietary validation and billing information with other IXCs would be "anti-competitive" is as easily resolved.^{7/} As demonstrated in comments filed by Zero Plus Dialing, Inc., sharing of validation and billing information would not require AT&T to permit its competitors to access any technology or customer information proprietary to AT&T.^{8/}

AT&T's remaining contentions regarding the purported fairness of its CIID card program vis-a-vis its competitors, and the purported opportunities of any IXC to issue a 0+ card on a proprietary basis, have already been fully refuted in the record.^{9/} Nor is there any basis for AT&T's objection to the Commission exercising its jurisdiction to adopt the proposed rule.^{10/} Accordingly, the proposal to permit AT&T to restore 0+ dialed calling cards to the

^{9/}(...continued)

card, or (2) providing additional oral branding information indicating that their rate will apply to the call billed to another IXC calling card. In this way, any rate expectation created by AT&T's card marketing would either be accommodated or expressly corrected. Moreover, if the latter option were chosen, the caller would, pursuant to the Commission's other notice and choice requirements, be able to choose whether to have the call carried by the presubscribed carrier or to hang up and dial an access code for another carrier.

^{7/} AT&T Comments at 4.

^{8/} Zero Plus Dialing, Inc. ("ZPDI") Comments at 10-12 (detailing how such sharing could be accomplished without compromising proprietary AT&T customer information).

^{9/} See, e.g., Joint Comments on Emergency Motion for an Interim Order of ZPDI, OAN Services, Inc. and Resurgens Communications Group, Inc., CC Docket No. 91-115 (filed Feb. 10, 1992) (incorporated in the record herein, Notice at para. 40 n.41). Indeed, Sprint's recent issuance of a proprietary card usable with 10XXX access stands in stark contrast to AT&T's CIID card practices. Sprint has stated that it always instructs its callers to use access codes, even though callers can reach Sprint by dialing 0+ at phones presubscribed to Sprint. See Sprint Comments at 8. See also Sprint proprietary calling card dialing instructions attached hereto as Exhibit 1, which do not instruct callers to dial 0+ to reach Sprint's network.

^{10/} AT&T Comments at 4. The Commission's proposed rule does not impose any such validation and billing requirement on AT&T, it simply gives AT&T a choice as to whether to provide such information in order to be able to use a public domain access method for its calling
(continued...)

public domain by making validation and billing information available to other IXC's should be adopted without delay.

II. IF AT&T RESTRICTS USE OF THE CIID CARDS TO ACCESS CODES, THE COMMISSION MUST TAKE SEVERAL STEPS TO ENSURE THAT CARDHOLDERS ARE RE-EDUCATED TO USE ACCESS CODES AND ELIMINATE THE ON-GOING COMPETITIVE HARM AT&T'S 0+ DIALING INSTRUCTIONS HAVE CREATED

AT&T's arguments concerning the potential consumer and competitive harms of making validation and billing information available are clearly shown to be nothing more than a smoke screen when it asserts that there is "no circumstance in which AT&T could envision making its calling data available for validation and billing by its OSP competitors."¹⁰ Despite the fact that its purported concerns are easily addressed, and that it is the preferred option from its subscribers' perspective, AT&T nevertheless apparently intends to reject the validation and billing option. Instead, it would apparently prefer to restrict use of the cards to access code dialing.

As discussed at length in our initial comments and in the comments of a number of other parties, it is critical that the Commission undertake several steps to ensure that, if this option is open to AT&T, cardholders will be re-educated to use access codes with AT&T's cards, and that the continuing competitive damage and costs incurred by other IXC's as a result of AT&T's 0+ dialing instructions is eliminated.

¹⁰/(...continued)

cards. Moreover, the Commission has legal authority to adopt the proposed rule, as numerous parties have shown in the record. See, e.g., CompTel Comments at 6-7 (the Commission has authority to regulate telephone calling card practices under both Titles I and II of the Communications Act); ITI Comments at 25-26 (Commission has legal authority under Title II to require AT&T to permit other IXC's to validate and bill the CIID card); BellSouth Comments at 1-3; Value-Added Comments at 4-5.

¹¹/ AT&T Comments at 5.

A. AT&T Must Re-Issue Its Calling Cards With Correct Dialing Instructions, and Cease Making the Cards Available For Billing By the LECs and Selected IXCs

In their initial comments, Joint Commenters demonstrated that, if it decides to retain the "proprietary" nature of the cards, AT&T must re-issue its calling cards with correct dialing instructions specifying only access code use to avoid further consumer confusion and harm to its competitors. Since the cards themselves contain directions to cardholders to dial 0+, mere notices mailed to customers would be wholly inadequate. Moreover, to assure that full and correct information be provided concerning calling card use and non-proprietary options, it is also imperative that the Commission supervise AT&T's fulfillment of this requirement, including approving AT&T's specific corrective dialing instructions, before they are disseminated to consumers to ensure that they are consistent with the Commission's rules.^{12/}

Joint Commenters also demonstrated that AT&T should be required to reject 0+ calls made with its proprietary CIID cards. AT&T and several other commenters have now claimed, however, that it is not possible to screen calls to distinguish 10XXX+0 from 0+ calls in order to reject 0+ proprietary calling card calls.^{13/} To the extent that this claim is substantiated, it is all the more important that AT&T be required to re-issue its calling cards with new access code dialing instructions to educate cardholders to use access codes rather than dialing 0+.

^{12/} In this regard, the confusion engendered by AT&T's assertion in marketing materials that "government requirements" prohibit shared calling card numbers with local telephone companies, thus requiring the re-issuance of calling cards to consumers, demonstrates the need for the Commission to ensure that its directives are carried out properly. AT&T has yet to explain adequately the meaning of its reference to "government requirements" in those marketing materials. See AT&T Communications, Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 3380, 3537, 3542 and 3543, CC Docket No. 92-95, Memorandum Opinion and Order (released June 2, 1992) at n.51.

^{13/} See, e.g., Comments of AT&T at 8; Comments of the Ameritech Operating Companies at 3; Comments of the NYNEX Telephone Companies at 2-3.

Moreover, the Commission should require AT&T to cease making the card available for billing by the LECs and other IXC's including Airfone.^{14/} AT&T's selective provision of this information to the LECs and Airfone is patently discriminatory and demonstrates that AT&T's CIID card is not truly proprietary.^{15/}

Absent reissuance of the cards with corrected dialing instructions and an end to AT&T's discrimination in providing validation and billing to selected carriers, the competitive harm created by AT&T's CIID card program will continue virtually unabated.

B. The Commission Should Require AT&T To Compensate Other IXC's for Costs Forced On Them As a Result of 0+ Dialing By AT&T Cardholders

Moreover, even if the cards are reissued, failure to screen and block 0+ dialed calls billed to proprietary cards will prolong, if not doom in many cases, the process of correcting AT&T's earlier-issued 0+ dialing instructions in the minds of cardholders. As a result of AT&T's extensive marketing of the CIID cards, and the fact that 0+ dialing continues to be available at all of the aggregator locations served by AT&T, many callers will likely continue to dial 0+, even if AT&T reissues the cards with corrected dialing instructions as described above. IXC's will therefore continue to incur costs for 0+ dialed calls by AT&T cardholders at their presubscribed locations. The Commission should require AT&T to compensate other IXC's for the costs they incur as a result of proprietary CIID cardholders dialing 0+ at phones not presubscribed to AT&T, which are now a majority in some payphone markets. IXC's must be compensated by AT&T for the costs its dialing instructions have forced on them.

^{14/} See, e.g., Comments of ZPDI at 7.

^{15/} See ATC, AmeriCall and First Phone Comments at 3.

Requiring AT&T to compensate other IXC's in this manner is fair and equitable. Indeed, in CC Docket No. 91-35, the Commission concluded that "considerations of equity" required it to order that payphone owners be compensated for the use of their equipment for access code calls -- i.e., calls not carried by the carrier presubscribed to the pay telephone.^{16/} Similar equity considerations apply here, where other IXC's incur costs as a direct result of AT&T's marketing of a proprietary calling card which instructs its cardholders to dial 0+ at aggregator telephones.^{17/} Other IXC's would thereby realize cost savings immediately, putting downward competitive pressure on rates and facilitating equitable competitive opportunities for all carriers.

C. The Commission Should Prohibit Commission Payments to Aggregators for Proprietary Traffic

To ensure continued competition in the operator services market, the Commission should also prohibit IXC's from paying commissions to aggregators on proprietary card traffic.^{18/} When a consumer uses a proprietary card, the call is required to be routed to the network of the card-issuing carrier, either through use of an access code or, in AT&T's case, through failure to make validation and billing available for 0+ calls entering the presubscribed carrier's network, thereby requiring re-direction to AT&T. Use of proprietary cards therefore

^{16/} See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, 6 F.C.C. Rcd. 4736, 4745 (1991), pet. for recon. pending; see also CC Docket No. 91-35, Second Report and Order, FCC 92-170, at para. 5 (released May 8, 1992), pet. for review pending.

^{17/} As with private payphone compensation, it would be preferable for compensation to be paid on a per call basis for each call dialed 0+ to an IXC's network for which the caller seeks to use a proprietary card issued by another IXC. For example, the Commission could consider implementing such compensation pursuant to interstate transfer service tariffs as Capital Network System, Inc. has suggested. See CNS Comments at 16.

^{18/} See Comments of Sprint Communications Company ("Sprint") at 6, 14-15.

forces a user to use the IXC associated with the billing card, not the carrier presubscribed by the location owner.

Joint Commenters agree with Sprint's comment that AT&T's compensation of aggregators for CIID card traffic should not be permitted.^{19/} Commissions for such calls would effectively compensate location owners for a choice made by the card used, not the location owner, and enable AT&T to translate its CIID card customer base into a tremendous marketing advantage with respect to aggregators.

Eliminating the payment of commissions on proprietary traffic as Sprint suggests would eliminate AT&T's ability to leverage its massive base of CIID cardholders (largely inherited at divestiture) in order to re-monopolize the aggregator presubscription market.^{20/} This prohibition would enable "[a]ll IXCs . . . to compete, on equal terms, for public phone presubscription on the basis of commissions on traffic from non-proprietary cards."^{21/}

^{19/} See *id.* at 15.


^{20/} There can be no doubt of the pivotal role AT&T has assigned its CIID cards in attempting to recapture a monopoly in the aggregator presubscription market. See, e.g., Joint Comments of AmeriCall, Cleartel, First Phone and U.S. Long Distance, Inc., CC Docket No. 91-115 (filed Aug. 15, 1991) at Attachment 1, AT&T Marketing Letter to State of Oklahoma (dated July 17, 1990).

^{21/} Sprint Comments at 15.

CONCLUSION

For the reasons set forth herein and in their initial comments, Joint Commenters urge the Commission to adopt promptly the proposed rule to resolve the consumer problems and competitive harm created by AT&T's CIID card program.

Respectfully submitted,


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June 17, 1992

EXHIBIT 1

SPRINT PROPRIETARY CALLING
CARD DIALING INSTRUCTIONS



Sprint Customer Service 24 hours a day, 7 days a week 1-800-877-4646

[Redacted]

Calls within the U.S.	(and to Canada, Puerto Rico & the Caribbean) 1. Dial 10333 + 0 + area code + number. Listen for tone. 2. Dial FONCARD number listed below.
Multiple Calls	To redial or make another long distance call, don't hang up. 1. Push "*" button for two full seconds. Listen for tone. 2. Dial "0" + area code + number.
International Calls from the U.S.	1. Dial 10333 + 01 + country code + city code + number + # button. Listen for tone. 2. Dial FONCARD number listed below.
FONCARD[™] number	[Redacted]

(if you do not hear: "Welcome to Sprint," dial 1-800-877-8000) CSGG

EXHIBIT 1

SPRINT PROPRIETARY CALLING CARD DIALING INSTRUCTIONS

Calling in the U.S.

(And to Canada, Puerto Rico and the Caribbean)

Dial 10333 + 0 + area code +
 phone number
 Listen for tone
 When you hear "Welcome to Sprint"
 Enter your FÖNCARD number
 (on the back of your card)

(From *rotary phones* wait on the line for a Sprint Operator to assist you.)

If you don't hear "Welcome to Sprint," hang up and

Dial 1-800-877-8000
 Listen for tone

Dial 0 + area code + phone number
 Enter your FÖNCARD number
 (on the back of your card)

Note: If making more than one
 FÖNCARD call, stay on the line and
 follow the instructions for the Multiple
 Calling Feature at right.

Calling from a Hotel

For long-distance calling from your hotel room,
 ask the hotel operator how to make a 10333 call
 or a toll-free 800 call, then follow regular
 dialing instructions.

Multiple Calling Feature

To make another long-distance call or to access
 Sprint Easy Features™ don't hang up. Simply:

Press **#** (for two seconds)
 Listen for tone

Dial 0 + next area code + phone number
 or

Dial the desired Easy Feature code
 (see inside)

Misdial Feature

If you make a mistake while dialing your
 FÖNCARD number, don't hang up. Simply:

Press *****
 Listen for tone
 Enter your FÖNCARD number

International Calling from the U.S.

Dial 10333 + 01 + country code + city
 code + phone number + **#**
 Listen for tone
 When you hear "Welcome to Sprint,"
 Enter your FÖNCARD number
 (on the back of your card)

(From *rotary phones* wait on the line for a
 Sprint Operator to assist you with international
 directory assistance, person-to-person or
 station-to-station calls.)

If you don't hear "Welcome to Sprint," hang up and

Dial 1-800-877-8000
 Listen for tone

Dial 01 + country code + city code +
 phone number + **#**
 Enter your FÖNCARD number
 (on the back of your card)

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June 1992, copies of Joint Reply Comments of Cleartel Communications, Inc. and Com Systems, Inc. were served by hand delivery upon the following:

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